

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	MEMPHIS CATV)	
	(Time Warner Entertainment, LP))	
	Various Personalty Accounts, Ex. A)	Shelby
	Commercial Property)	County
	Tax Years 1999-2000)	

FINAL DECISION AND ORDER

Statement of the case

The State Board of Equalization has remanded this case for our determination on the merits after disposing of certain legal issues involving converter boxes and remote control equipment. The Board affirmed the initial decision and order of the administrative judge on these issues, and a listing of the accounts and assessments as determined by the administrative judge is contained in Exhibit A. The hearing on remand was conducted in Memphis on July 11, 2006, before Commission members Stokes (presiding), Brooks, Gilliam, and Wade. Time Warner was represented by counsel, Mr. John Farris and Mr. Paul Peel, and the assessor was represented by Assistant County Attorney Thomas Williams.

Findings of fact and conclusions of law

Memphis CATV division of Time Warner provides cable television and other services to subscribers in the Memphis area, utilizing a signal distribution network that partly utilizes existing utility infrastructure to the point of the "drop" that delivers service to a particular subscriber. The company also maintains storage facilities for equipment that is retired or held for use. The company duly filed its tangible personal property reports for 1999 and 2000 with the assumption that settlements or agreements entered for prior years' assessment would continue to apply. For example, the company omitted converter boxes on subscriber premises or held in its warehouses. The assessor audited the accounts in 2000 and revised the assessments for 1999 and 2000 based partly on her conclusion that the law required the converter boxes to be assessed to the company, and partly on cost information obtained from the company's books.

Memphis CATV officials testified to the administrative judge and to the Commission that had they known the assessor was going to reject their personalty filings they would have claimed nonstandard value for their equipment, or at the very least they would have cleared from their books certain retired equipment that

was no longer in service or indeed may have been scrapped or sold. The company offered the testimony of Charles Jerominski, an engineer and appraiser who offered his opinion of the value of the "drops" based on their replacement cost determined from second-hand sales and depreciation estimated by reference to accepted studies ("Iowa survivor curves"). Mr. Jerominski and an additional company witness, Senior Tax Director Jim Golly, stated that part of the difference in the auditor's cost and the company's replacement cost owed to unrecorded retirements that remained on the company's books notwithstanding the related equipment was no longer in place.

Mr. Jolly also testified that apart from the drops, the auditor's estimate of cost was overstated because it included certain capitalized expenses, capitalized interest, preengineering costs, and pole make-ready costs which were intangibles and not, in his opinion, properly part of the value of the tangible property. The administrative judge rejected this contention, and we agree. Both rules of the Board (0600-5-.01 (6)) and an authoritative appraisal source cited by the judge (American Society of Appraisers) require capitalized indirect costs to be included in the cost approach to value.

On the remaining issues, the Commission has reviewed the initial decision and order of the administrative judge and considered the evidence and arguments offered by the parties, but has been unable to reach a consensus. The initial decision and order determined an insufficient basis had been shown either to adopt a nonstandard value for the house drops, or to reduce the value of distribution plant by unrecorded retirements. As the appellant before the Commission, Memphis CATV bore the burden of proving error in the initial decision and order. Having afforded the appellant a hearing, the Commission is unable to reach consensus on these two issues, and therefore the initial decision and order will become a final decision and order subject to further administrative or judicial review as provided by law.

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is affirmed as to the indirect cost issue. The converter box and related equipment addressed by the State Board will be considered leased property or rental inventory as directed in that order. In all other respects the initial

decision and order will become a final order subject to further administrative review. The property shall be valued and assessed as stated in Exhibit A.

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or other county as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

Dated: Aug. 17, 2006



Presiding Member

ATTEST:



Executive Secretary

cc: Mr. John Farris, Esq.
Ms. Rita Clark, Assessor
Mr. Thomas Williams, Esq.

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 Commercial Property) County
 Tax Years 1999-2000)

<u>Account No.</u>	<u>Tax Year</u>	<u>Appraisal</u>	<u>Assessment</u>
015730	1999	\$46,614,700	\$13,984,410
015730	2000	\$39,412,100	\$11,823,630
058000	1999	\$126,500	\$37,950
058000	2000	\$105,500	\$31,650
058001	1999	\$131,600	\$39,480
058001	2000	\$110,300	\$33,090
058156	2000	\$4,818,400	\$1,445,520
064942	1999	\$10,033,800	\$3,010,140
064942	2000	\$8,663,300	\$2,598,990
071695	1999	\$138,400	\$41,520
071695	2000	\$115,200	\$34,560
073176	2000	\$5,815,800	\$1,744,740
101526	2000	\$696,100	\$208,830
101527	2000	\$2,276,800	\$683,040
147993	2000	\$45,000	\$13,500
148061	2000	\$1,559,300	\$467,790

EXHIBIT A